davits. Whatever has been urged on behalf of the appellants in this court, was urged before the learned judge who has stated his reasons for refusing to set aside the order. If the learned judge rightly appreciated the facts and applied to those facts the true principles, that was a sound exercise of judicial direction. The mere fact that this court might have taken a different view is not a sufficient ground for interference with that discretion. If any authority is required for that proposition it is to be found in the case of *Durga Das Das* v. *Nalin Chandra,*[5] a case on which the defendants are themselves relying in support of their appeal. Even in the case of *Bishamberdas & Co.* v. *Sachoomal Kotoomal,*[4] another case on which the appellants seek to rely, it was held that where the lower court has correctly stated and appreciated the most material facts in the case, and has not misunderstood or misapplied the law, and has deliberately exercised a discretion entrusted to it by law, the appellate court will not interfere. The same principle is to to be found in *Golding* v. *Wharton Saltworks Company,*[7] *Watson* v. *Rodwell,*[8] and *Evans* v. *Bartlam.*[9] To use the words of Jenkins, L.J. in *Grimshaw* v. *Dunbar,*[10] "did the judge here exercise his discretion on wrong considerations or wrong grounds, or did he ignore some of the right considerations?" I do not think so. This court, therefore, cannot interfere.

The only other point for me to consider is whether, as alleged by the appellants, the order made on December 3, 1971 is defective in that it is an order which provides for an order in the alternative. There is perhaps something in what the appellants alleged, but this is a defect which this court has the power to set right under sections 69(4) and 72 of the Courts of Judicature Act, 1964. The order made therefore is amended by deleting that part of it which relates to the attachment before judgment of a sum of not less than $1 million being part of the proceeds of sale of the defendants' lands specified in the schedule annexed to the order, so that the attachment before judgment will be confined to the attachment of the lands themselves. As there is likely to be some difficulty in the drawing up of the order I would direct that the operative part of the order do read as follows: —

"IT IS ORDERED that the defendants be and are hereby, for a period commencing with the date of registration of this Order under the provisions of the National Land Code, and ending with the expiry of six months from the date of this Order, prohibited and restrained from transferring or charging or leasing the immovable property specified in the schedule hereunder.

"AND IT IS FURTHER ORDERED that the appropriate land authority do give effect to this Order by registering it as a prohibitory order under the provisions of the National Land Code."

In the result the appeal is dismissed but the order of attachment before judgment will be amended as I have indicated above. The appellants must pay the costs of the appeal.

Suffian and **Ong Hock Sim F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Chooi & Co.; Rithauddeen & Aziz.*

WONG LEE SING v. MANSOR

[A.C.J. (Sharma J.) May 17, 1972]

[Ipoh — Civil Appeal No. 5 of 1972]

Contract — Void agreement — Sale of land — Vendor in no position to execute transfer to purchaser — Payment of deposit — Unjust enrichment — Refund — Contracts (Malay States) Ordinance, 1950, s. 66.

Land Laws — Transfer — Vendor having no title to property — Deposit paid — Void agreement.

The respondent/defendant had entered into an agreement dated April 12, 1971, with the appellant/plaintiff for the sale of a piece of land. The respondent represented to the appellant that he was in a position to transfer the land to him. However, the appellant subsequently discovered that the respondent was in no position to do so and he had no title to the land.

The respondent had signed the agreement as a 'vendor' and received a 'deposit' of $1,200 for the land which was priced at $4,500. He stated in court that he was only acting as a broker. It was stated by a witness that the piece of land sold stood in the name of one Ismail bin Yusof as on April 12, 1971, and that there was a restriction imposed upon the said land in that no transactions could be entertained without the prior written permission of the Mentri Besar.

Held, allowing the appeal: (1) section 66 of the Contracts Ordinance, 1950 applied to the circumstances of this case, in that there was unjust enrichment. The respondent was at no time able to execute the transfer in favour of the appellant, and there was no suggestion that the said Ismail was ready and willing to execute the transfer;

(2) therefore, the order of the learned magistrate must be set aside and that the sum of $1,200 be refunded to the appellant, with costs.

MAGISTRATE'S CIVIL APPEAL.

K. K. Yeow for the appellant.

Vincent Ng for the respondent.

Sharma J. (delivering oral judgment): The plaintiff and the defendant entered into two separate agreements on 13th March, 1971 and 12th April, 1971 respectively. The first agreement was in respect of two pieces of land namely, Lot No. 11845 and Lot No. 11873 at Raja Hitam while the second agreement was only in respect of Lot No. 11873. Section 63 of the Contracts Ordinance, 1950 deals with agreements of this type. The effect of that was that the only agreement that had to be performed was the second agreement dated 12th April, 1971 which is Exhibit P1 in this case. The defendant signed this agreement as a "vendor" and received a "deposit" of $1,200 "for the purchase price" of Lot No. 11873 from the plaintiff. The price of the land is given in Exhibit P1 as $4,500.

In paragraphs 3 and 4 of the amended statement of claim, the plaintiff referred to the agreement (Exhibit P1) and the duty of the defendant to sell the land in question for $4,500 as well as his duty to execute a valid and registrable transfer in respect of the said land in favour of the plaintiff. his nominee or nominees. There was no traverse to paragraph 4 of the amended statement of claim but in paragraph 2 of the defence the defendant did admit having received a sum of $1,200 "for the sale of only one piece of land for the sum of $4,500". In paragraph 4 of the defence the defendant denied having "refused to do the necessary land transaction in favour of the

plaintiff" and in paragraph 5 the defendant pleaded that the plaintiff had no claim to ask the defendant for a "transfer" of the land.

From a mere perusal of the pleadings it is obvious that the impression the defendant wished to convey was that he had agreed to execute a transfer but was not liable to do so. The plaintiff while giving evidence stated: "When the agreement was entered into the defendant told me that the said land belonged to him." The plaintiff was not at all cross-examined on that. This was evidence of clear representation by the defendant that the land in fact did belong to him and it was he who was going to execute the transfer. The defendant stated in court that he was only acting as a broker. He did not say so in his defence. The plaintiff had called the Assistant Collector of Land Revenue, Lumut, as his witness who stated that the land in question, *i.e.*, Lot No. 11873 stood in the name of one Ismail bin Yusof on 12th April 1971 and that there was a restriction imposed upon the said land that it could not be sold, charged, leased or transferred without the prior written permission of the Mentri Besar. Even if the defendant was allowed the latitude to go outside his pleadings and to allege that while contracting with the plaintiff he was only acting as an undisclosed agent for Ismail bin Yusof, the question which arises in this case is the application of section 186 of the Contracts Ordinance, 1950 which says:

"186. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them, liable."

Bowstead in his Law on Agency (Twelfth Edition) at page 257 says: —

"Every agent who contracts personally, though also on behalf of his principal, is personally liable, and may be sued in his own name, on the contract, whether the principal be named therein, or be known to the other contracting party, or not, and either the principal or agent may be sued, unless the other contracting party elects to give exclusive credit to the principal. But no agent is personally liable on any contract made by him merely in his capacity of an agent, even if he make it fraudulently, knowing that he has not authority to do so.

Exhibit P1 nowhere indicates that the defendant was entering into an agreement with the plaintiff as an agent. *Bowstead* again in article 116 at page 266 of the same edition goes on to say:

"The question whether the agent is to be deemed to have contracted personally, in the case of a contract in writing other than a bill of exchange, promissory note, or cheque, depends upon the intention of the parties, as appearing from the terms of the written agreement as a whole, the construction whereof is a matter of law for the court —

(a) if the contract be signed by the agent in his own name without qualification, he is deemed to have contracted personally, unless a contrary intention plainly appears from other portions of the document; ...."

Nowhere in his evidence did the defendant suggest that he was the agent of Ismail bin Yusof.

Section 66 of the Contracts Ordinance deals with unjust enrichment and reads:

"66. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

I think this was a clear case of the application of section 66 of the Contracts Ordinance. The defendant had entered into an agreement representing to the plaintiff that he was in a position to transfer the land to the plaintiff. The plaintiff subsequently found that the defendant was in no position to do so as he had no title to the land.

The learned magistrate seemed to have attached too great an importance on the non-production of Mr. C. C. Goh as a witness for the plaintiff. Even if the plaintiff did not go to the office of Mr. C. C. Goh and the defendant did present himself there, it should have made no difference whatsoever to the position in law as the defendant was at no time able to execute the transfer in favour of the plaintiff. There was no suggestion that Ismail bin Yusof was ready and willing to execute the transfer and apply for the requisite permission from the Mentri Besar.

The appeal is allowed and the order of the learned magistrate set aside. There will be an order that the defendant repay the plaintiff the sum of $1,200 The plaintiff will have the costs of the appeal and also the costs in the court below.

Appeal allowed.

Solicitors: *Yoon, Woon & Yeow; Ngan & Co.*

SETIA USAHA TETAP KEMENTERIAN PELAJARAN v. COLLECTOR OF LAND REVENUE, BUTTERWORTH

[O.C.J. (Chang Min Tat J., I.W. Hake and K. Mushir Ariff, Assessors) June 24, 1972]

[Penang — Land Acquisition Reference No. 1 of 1971]

Land Laws — Compulsory acquisition — Objection to award of collector — Reference to court — Determination of 'market value' — Land Acquisition Act, 1960, Part V, ss. 37 and 41(3).

This was a reference to court under the provisions of Part V of the Land Acquisition Act, 1960, objecting to the collector's award in respect of the acquisition of certain lands.

The landlords demanded $15,000 per acre but were only awarded $8,500. In assessing this compensation, the collector rejected the evidence of private sales in the light of the evidence of prices paid by the Government.

There were two unusual features to the case. In the first place, the objection to the collector's award was not made by the landowner but by the appellant on behalf of the Ministry of Education for whom the land was acquired. Secondly, the collector appeared as a party in the proceedings.

Held, (1) the First Schedule to the Land Acquisition Act, 1960 contains the principles relating to the determination of compensation and makes the market value the main determinant, subject to certain considerations. The collector was not right in ignoring the evidence of sales of other lands in the same locality that were clearly shown to be between parties, not trammelled by any provisions of law and not under colouration of acquisition;

(2) on the whole of the evidence and the considered opinions of two experienced assessors, the collector's valuation of $8,000 per acre would be reduced to $6,000 per acre.